

## SECOND DIVISION

**[ G.R. No. 167569, September 04, 2009 ]**

**CARLOS T. GO, SR., PETITIONER, VS. LUIS T. RAMOS,  
RESPONDENT.**

**[G.R. NO. 167570]**

**JIMMY T. GO, PETITIONER, VS. LUIS T. RAMOS, RESPONDENT.**

**[G.R. NO. 171946]**

**HON. ALIPIO F. FERNANDEZ, JR., IN HIS CAPACITY AS THE  
COMMISSIONER OF THE BUREAU OF IMMIGRATION; ATTY.  
FAISAL HUSSIN AND ANSARI M. MACAAYAN, IN THEIR  
CAPACITY AS INTELLIGENCE OFFICERS OF THE BUREAU OF  
IMMIGRATION, PETITIONERS, VS. JIMMY T. GO A.K.A. JAIME T.  
GAISANO, RESPONDENT.**

### D E C I S I O N

**QUISUMBING, J.:**

Before us are three petitions. G.R. Nos. 167569 and 167570 are petitions for review on certiorari to set aside the October 25, 2004 Decision<sup>[1]</sup> and February 16, 2005 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 85143 that affirmed the Decision<sup>[3]</sup> dated January 6, 2004 and Order<sup>[4]</sup> dated May 3, 2004 of the Regional Trial Court (RTC) of Pasig City, Branch 167 in SCA No. 2218 upholding the preparation and filing of deportation charges against Jimmy T. Go, the corresponding Charge Sheet<sup>[5]</sup> dated July 3, 2001, and the deportation proceedings thereunder conducted.

On the other hand, G.R. No. 171946, also a petition for review on certiorari, seeks to set aside the December 8, 2005 Decision<sup>[6]</sup> and March 13, 2006 Resolution<sup>[7]</sup> of the appellate court in CA-G.R. SP No. 88277.

Considering that the three cases arose from the same factual milieu, the Court resolved to consolidate G.R. Nos. 167570 and 167569 with G.R. No. 171946 per Resolution<sup>[8]</sup> dated February 26, 2007.

These petitions stemmed from the complaint-affidavit<sup>[9]</sup> for deportation initiated by Luis T. Ramos before the Bureau of Immigration and Deportation (now Bureau of Immigration) against Jimmy T. Go alleging that the latter is an illegal and undesirable alien. Luis alleged that while Jimmy represents himself as a Filipino citizen, Jimmy's personal circumstances and other records indicate that he is not so. To prove his contention, Luis presented the birth certificate of Jimmy, issued by the

Office of the Civil Registrar of Iloilo City, which indicated Jimmy's citizenship as "FChinese." Luis argued that although it appears from Jimmy's birth certificate that his parents, Carlos and Rosario Tan, are Filipinos, the document seems to be tampered, because only the citizenship of Carlos appears to be handwritten while all the other entries were typewritten. He also averred that in September 1989 or thereabout, Jimmy, through stealth, machination and scheming managed to cover up his true citizenship, and with the use of falsified documents and untruthful declarations, was able to procure a Philippine passport from the Department of Foreign Affairs.

Jimmy refuted the allegations in his counter-affidavit,<sup>[10]</sup> averring that the complaint for deportation initiated by Luis was merely a harassment case designed to oust him of his rightful share in their business dealings. Jimmy maintained that there is no truth to the allegation that he is an alien, and insisted that he is a natural-born Filipino. Jimmy alleged that his father Carlos, who was the son of a Chinese father and Filipina mother, elected Philippine citizenship in accordance with Article IV, Section 1, paragraph 4<sup>[11]</sup> of the 1935 Constitution and Commonwealth Act No. 625<sup>[12]</sup> (Com. Act No. 625), as evidenced by his having taken the Oath of Allegiance on July 11, 1950 and having executed an Affidavit of Election of Philippine citizenship on July 12, 1950. Although the said oath and affidavit were registered only on September 11, 1956, the reason behind such late registration was sufficiently explained in an affidavit. Jimmy added that he had even voted in the 1952 and 1955 elections.<sup>[13]</sup> He denied that his father arrived in the Philippines as an undocumented alien, alleging that his father has no record of arrival in this country as alleged in the complaint-affidavit precisely because his father was born and raised in the Philippines, and in fact, speaks fluent Ilonggo and Tagalog.<sup>[14]</sup>

With regard to the erroneous entry in his birth certificate that he is "FChinese," he maintained that such was not of his own doing, but may be attributed to the employees of the Local Civil Registrar's Office who might have relied on his Chinese-sounding surname when making the said entry. He asserted that the said office has control over his birth certificate; thus, if his father's citizenship appears to be handwritten, it may have been changed when the employees of that office realized that his father has already taken his oath as a Filipino.<sup>[15]</sup> As regards the entry in his siblings' certificates of birth, particularly Juliet Go and Carlos Go, Jr., that their father is Chinese, Jimmy averred that the entry was erroneous because it was made without prior consultation with his father.<sup>[16]</sup>

In a Resolution<sup>[17]</sup> dated February 14, 2001, Associate Commissioner Linda L. Malenab-Hornilla dismissed the complaint for deportation against Jimmy. Associate Commissioner Hornilla affirmed the findings of the National Bureau of Investigation tasked to investigate the case that Jimmy's father elected Filipino citizenship in accordance with the provisions of the 1935 Philippine Constitution. By operation of law, therefore, the citizenship of Carlos was transmitted to Jimmy, making him a Filipino as well.

On March 8, 2001,<sup>[18]</sup> the Board of Commissioners (Board) reversed said dismissal, holding that Carlos' election of Philippine citizenship was made out of time. Finding Jimmy's claim to Philippine citizenship in serious doubt by reason of his father's questionable election thereof, the Board directed the preparation and filing of the

appropriate deportation charges against Jimmy.

On July 3, 2001, the corresponding Charge Sheet was filed against Jimmy, charging him of violating Section 37(a)(9)<sup>[19]</sup> in relation to Section 45(c)<sup>[20]</sup> of Com. Act No. 613, otherwise known as The Philippine Immigration Act of 1940,<sup>[21]</sup> as amended, committed as follows:

x x x x

1. That Respondent was born on October 25, 1952 in Iloilo City, as evidenced by a copy of his birth certificate wherein his citizenship was recorded as "Chinese";

2. That Respondent through some stealth machinations was able to subsequently cover up his true and actual citizenship as Chinese and illegally acquired a Philippine Passport under the name JAIME T. GAISANO, with the use of falsified documents and untruthful declarations, in violation of the above-cited provisions of the Immigration Act[;]

3. That [R]espondent being an alien, has formally and officially represent[ed] and introduce[d] himself as a citizen of the Philippines, for fraudulent purposes and in order to evade any requirements of the immigration laws, also in violation of said law.

**CONTRARY TO LAW.**<sup>[22]</sup>

On November 9, 2001, Carlos and Jimmy filed a petition for certiorari and prohibition<sup>[23]</sup> with application for injunctive reliefs before the RTC of Pasig City, Branch 167, docketed as SCA No. 2218, seeking to annul and set aside the March 8, 2001 Resolution of the Board of Commissioners, the Charge Sheet, and the proceedings had therein. In essence, they challenged the jurisdiction of the Board to continue with the deportation proceedings.

In the interim, the Board issued a Decision<sup>[24]</sup> dated April 17, 2002, in BSI-D.C. No. ADD-01-117, ordering the apprehension and deportation of Jimmy. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Board of Commissioners hereby Orders the apprehension of respondent JIMMY T. GO @ JAIME T. GAISANO and that he be then deported to CHINA of which he is a citizen, without prejudice, however, to the continuation of any and all criminal and other proceedings that are pending in court or before the prosecution arm of the Philippine Government, if any. And that upon expulsion, he is thereby ordered barred from entry into the Philippines.

SO ORDERED.<sup>[25]</sup>

In view of the said Decision, Carlos and Jimmy filed on June 13, 2002 a

supplemental petition for certiorari and prohibition<sup>[26]</sup> before the trial court and reiterated their application for injunctive reliefs. The trial court issued a writ of preliminary prohibitory injunction pending litigation on the main issue, enjoining the Bureau from enforcing the April 17, 2002 Decision.<sup>[27]</sup> Later, however, the trial court dissolved the writ in a Decision<sup>[28]</sup> dated January 6, 2004 as a consequence of the dismissal of the petition.

Carlos and Jimmy moved for reconsideration. But their motion was likewise denied.<sup>[29]</sup>

Following the dismissal of the petition in SCA No. 2218, the Board issued a warrant of deportation<sup>[30]</sup> which led to the apprehension of Jimmy. Jimmy commenced a petition for habeas corpus, but the same was eventually dismissed by reason of his provisional release on bail.<sup>[31]</sup>

Carlos and Jimmy then questioned the Decision in SCA No. 2218 as well as the Resolution denying their motion for reconsideration by way of a petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 85143. They imputed grave abuse of discretion by the trial court for passing upon their citizenship, claiming that what they asked for in their petition was merely the nullification of the March 8, 2001 Resolution and the charge sheet.

The appellate tribunal dismissed the petition.<sup>[32]</sup> It did not find merit in their argument that the issue of citizenship should proceed only before the proper court in an independent action, and that neither the Bureau nor the Board has jurisdiction over individuals who were born in the Philippines and have exercised the rights of Filipino citizens. The appellate tribunal also rejected their claim that they enjoy the presumption of being Filipino citizens.

The Court of Appeals held that the Board has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and in the process, determine their citizenship.

The appellate court agreed with the trial court that the principle of *jus soli* was never extended to the Philippines; hence, could not be made a ground to one's claim of Philippine citizenship. Like the trial court, the appellate tribunal found that Carlos failed to elect Philippine citizenship within the reasonable period of three years upon reaching the age of majority. Furthermore, it held that the belated submission to the local civil registry of the affidavit of election and oath of allegiance in September 1956 was defective because the affidavit of election was executed after the oath of allegiance, and the delay of several years before their filing with the proper office was not satisfactorily explained.

The course of action taken by the trial court was also approved by the appellate tribunal. The Court of Appeals stated that the trial court necessarily had to rule on the substantial and legal bases warranting the deportation proceeding in order to determine whether the Board acted without or in excess of jurisdiction, or with grave abuse of discretion. Moreover, the appellate court found that due process was properly observed in the proceedings before the Board, contrary to the claim of Jimmy.

Unfazed with the said ruling, they moved for reconsideration. Their motion having been denied,<sup>[33]</sup> Carlos and Jimmy each filed a petition for review on certiorari before this Court, respectively docketed as G.R. Nos. 167569 and 167570.

Meanwhile, in view of the dismissal of CA-G.R. SP. No. 85143, Bureau of Immigration Commissioner Alipio F. Fernandez, Jr. issued Warrant of Deportation No. AFF-04-003<sup>[34]</sup> dated November 16, 2004 to carry out the April 17, 2002 Decision in BSI-D.C. No. ADD-01-117. This resulted in the apprehension and detention of Jimmy at the Bureau of Immigration Bicutan Detention Center, pending his deportation to China.<sup>[35]</sup>

On account of his detention, Jimmy once again filed a petition for habeas corpus<sup>[36]</sup> before the RTC of Pasig City, Branch 167, docketed as SP. Proc. No. 11507 assailing his apprehension and detention despite the pendency of his appeal and his release on recognizance.

In an Order<sup>[37]</sup> dated December 6, 2004, the trial court dismissed the said petition ruling that the remedy of habeas corpus cannot be availed of to obtain an order of release once a deportation order has already been issued by the Bureau. Jimmy moved for reconsideration of the Order, but this was also denied by the trial court in an Order<sup>[38]</sup> dated December 28, 2004.

Jimmy assailed the Orders of the trial court in a petition for certiorari and prohibition before the appellate court, docketed as CA-G.R. No. 88277. The Court of Appeals granted the petition and enjoined the deportation of Jimmy until the issue of his citizenship is settled with finality by the court. The Court of Appeals held as follows:

x x x x

...the issuance of a warrant to arrest and deport the petitioner without any proof whatsoever of his violation of the bail conditions [that he was previously granted] is arbitrary, inequitable and unjust, for the policies governing the grant of his bail should likewise apply in the cancellation of the said bail. Although a deportation proceeding does not partake of the nature of a criminal action, yet considering that it is such a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person who all his life has always lived in the Philippines, where he has established his family and business interests, one who appears to be not completely devoid of any claim to Filipino citizenship, being the son of a Filipina, whose father is alleged to also have elected to be a Filipino, the constitutional right of such person to due process cannot be peremptorily dismissed or ignored altogether, and indeed should not be denied. If it later turns out that the petitioner is a Filipino after all, then the overly eager Immigration authorities would have expelled and relegated to statelessness one who might in fact be a Filipino by blood.

x x x x

**WHEREFORE**, in view of the foregoing, the petition with reference to the Warrant of Deportation issued by the BID is hereby **GRANTED**. The